UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,335	12/04/2001	Vedvyas Shanbhogue	2207/13056	9762

23838   7590   09/30/2004

KENYON & KENYON
1500 K STREET, N.W., SUITE 700
WASHINGTON, DC 20005

EXAMINER
BONURA, TIMOTHY M

ART UNIT	PAPER NUMBER
2114	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/000,335	SHANBHOGUE, VEDVYAS
	Examiner	Art Unit
	Tim Bonura	2114

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>04 December 2001</u>.
2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-18</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-18</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on <u>04 December 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/20/01</u>.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

- **Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook, et al, U.S. Patent Number, 5,966,304.**

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook, et al, U.S. Patent Number, 5,966,304.

3.   Regarding claim 1:

a.   Regarding the limitation of "taking the second engine out of service," Cook discloses a system with a primary and a secondary controllers (Lines 21-22 of Column 2), the primary controller is taking out of service for upgrading. (Lines 23-26 of Column 2). Cook discloses that the primary and secondary controllers are perfectly symmetric and can be used interchangeably. (Lines 52-57 of Column 5). (**Note:** for the purposes of rejection the prior art primary controller is used to reject the claimed second engine, the secondary controller is used to reject the claimed first engine).

b.   Regarding the limitation of "upgrading the application on the second engine," Cook discloses a system wherein the primary controller can be upgraded. (Lines 41-47 of Column 2).

    c.   Regarding the limitation of "assigning the second engine as a standby engine to the first engine and receiving run state updates from the first engine," Cook discloses a system wherein the secondary controller becomes the main execution controller of the system. (Lines 28-32 of Column 2).

    d.   Regarding the limitation of "assigning the first engine as the standby engine to the second engine and receiving run state updates from the second engine," Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).

    e.   Regarding the limitation of "upgrading the application on the first engine," Cook discloses a system wherein the secondary controller can be upgraded in the same manor as the first. (Lines 26-27 of Column 2).

4.   Regarding claim 2, Cook discloses that the primary controller is disqualified and disabled. (Lines 33-40 of Column 9).

5.   Regarding claim 3, Cook discloses that the secondary controller is disqualified and disabled. (Lines 56-58 of Column 9).

6.   Regarding claim 4, Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).

7.   Regarding claim 5, Cook discloses that qualification of an upgraded module is conditional upon verification of configuration of the controller. (Lines 40-45 of Column 6).

8.   Regarding claim 6, Cook discloses the secondary engine is not qualified and refuses the control of the system. (Lines 48-51 of Column 7).

9.   Regarding claim 7, Cook discloses the secondary engine is qualified and accepts the control of the system. (Lines 52-58 of Column 7).

10.   Regarding claim 8, Cook discloses a system with multiple controllers. (Lines 21-22 of Column 2).

11.   Regarding claim 9, Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. (Lines 33-55 of Column 9).

12.   Regarding claim 10, Cook discloses a system that has controllers is perfectly symmetrical and operates together. (Lines 53-57 of Column 5).

13.   Regarding claim 11:

   f.   Regarding the limitation of "determine if said active engine and said standby engine are executing different versions of an application software," Cook discloses a system of controllers that can have different operation systems that can be indicated. (Lines 23-28 of Column 5). The system also have can compare the first controller and the second controller for coherency. (Lines 12-15 of Column 6). An indication of a lack of coherency indicates a difference in the controller makeup. (Lines 15-18 of Column 6).

   g.   Regarding the limitation of "sending a description of work units from said active engine to said standby engine," Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it

can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).

h.   Regarding the limitation of "sending database activities from said active engine to said standby engine," Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).

14.   Regarding claim 12, Cook discloses a system where upon the re-connection of the primary controller, the backplane sends a signal to the secondary controller to indicate a return of the controller. (Lines 15-20 of Column 3).

15.   Regarding claim 13, Cook discloses that the controllers are synchronized (Liens 66-67 of Column 4), and that information regarding the states of the controllers can be passed between them. (Lines 6-7 of Column 5). The system controllers can have different operation systems that can be indicated. (Lines 23-28 of Column 5).

16.   Regarding claim 14, Cook discloses a system with multiple controllers. (Lines 21-22 of Column 2).

17.   Regarding claim 15:

i.   Regarding the limitations of "a first engine; a second engine," Cook discloses a system with a primary and a secondary controllers (Lines 21-22 of Column 2).

j.   Regarding the limitation of "a computer readable memory that stores instructions that when executed by said first and second engine cause the fault tolerant system to: designate said first engine as an active engine and said second engine as a standby engine," Cook discloses a system wherein the secondary controller becomes the main execution controller of the system. (Lines 28-32 of Column 2).

k.   Regarding the limitation of "determine if said active engine and said standby engine are executing different versions of an application software," Cook discloses a system of controllers that can have different operation systems that can be indicated. (Lines 23-28 of Column 5). The system also have can compare the first controller and the second controller for coherency. (Lines 12-15 of Column 6). An indication of a lack of coherency indicates a difference in the controller makeup. (Lines 15-18 of Column 6).

l.   Regarding the limitation of "send a description of work units from said active engine to said standby engine," Cook discloses a system wherein the primary controller, upon being upgraded and plugged back into the backplane, can receive updates from the secondary controller. Cook terms this as qualification (Lines 3-8 of Column 6), and it can occur once the upgrade controller is plugged back into the back plane. (Lines 33-55 of Column 9).

m.   Regarding the limitation of "send database activities from said active engine to said standby engine," Cook discloses a second that can re-qualify either the secondary or primary controller. (Lines 45-48 and 60-63 of Column 9).

18.   Regarding claim 16, Cook discloses a system where upon the re-connection of the primary controller, the backplane sends a signal to the secondary controller to indicate a return of the controller. (Lines 15-20 of Column 3).

19.   Regarding claim 17, Cook discloses that the controllers are synchronized (Liens 66-67 of Column 4), and that information regarding the states of the controllers can be passed between them. (Lines 6-7 of Column 5). The system controllers can have different operation systems that can be indicated. (Lines 23-28 of Column 5).

20.   Regarding claim 18, Cook discloses a system with multiple controllers. (Lines 21-22 of

Column 2).

Conclusion

-     Any inquiry concerning this communication or earlier communications from the

examiner should be directed to **Tim Bonura.**

  - o   The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.

  - o   The examiner can **currently** be reached at: **703-305-7762**. **On or after**

    October 15, 2004 the examiner can be reached at: **571-272-3654**.

-     If attempts to reach the examiner by telephone are unsuccessful, please contact

the examiner's supervisor, **Rob Beausoliel.**

  - o   The supervisor can be reached on **703-305-9713.**

-     The fax phone numbers for the organization where this application or proceeding

is assigned are:

  - o   **703-872-9306 for all patent related correspondence by FAX.**

-     Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov/. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

- Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **703-305-3900.**

- Responses should be mailed to:

  o **Commissioner of Patents and Trademarks**

  P.O. Box 1450

  Alexandria, VA 22313-1450

NADEEM IQBAL

tmb   **PRIMARY EXAMINER**

September 28, 2004

Tim Bonura

Examiner

Art Unit 2114